



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WATERWAY MATERIALS RECYCLING, LLC
FOR
WATERWAY MATERIALS
VPDES Permit No. VAR05
Storm Water Registration No. VAR051453**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Waterway Materials Recycling, LLC, regarding the Waterway Materials Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "2014 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expired on June 30, 2019. Waterway Materials Recycling, LLC, applied for registration under the Permit and was issued Registration No. VAR051453 on July 1, 2014.

3. "2019 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019, and which expires on June 30, 2024. Waterway Materials Recycling, LLC, applied for registration under the Permit and was issued Registration No. VAR051453 on July 1, 2019.
4. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "DMR" means Discharge Monitoring Report.
10. "Facility" means the Waterway Materials Recycling, LLC, facility located at 1431 Precon Dr., in Chesapeake, Virginia.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
15. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "Waterway" means Waterway Materials Recycling, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Waterway Materials Recycling, LLC, is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Waterway Materials Recycling, LLC ("Waterway") owns and operates the Waterway Facility ("Facility") located at 1431 Precon Dr., in Chesapeake, Virginia.

2. The 2014 Permit allowed, and the 2019 Permit allows Waterway to discharge stormwater associated with industrial activity from the Facility to the Southern Branch of the Elizabeth River, in strict compliance with the terms and conditions of the currently active permit.
3. The Southern Branch of the Elizabeth River flows to the Chesapeake Bay, Atlantic Ocean and small coastal basin. The Southern Branch of the Elizabeth River is listed in DEQ's 305(b) report as impaired for dioxin, enterococcus, dissolved oxygen, and PCBs in fish tissue.
4. On February 22, 2019, DEQ staff conducted a compliance inspection ("2019 Inspection") of the Facility. During the inspection DEQ observed the following:
 - a. Quarterly Visual Monitorings ("QVM") were not performed for 2017 and 2018.
 - b. Semi-annual Benchmark monitoring was not performed, documented or submitted for 2017 and 2018, for Industry Sector N, Scrap recycling and Waste Recycling Facilities. The benchmark monitoring parameters are: Copper, Aluminum, Iron, Lead, Zinc, TSS, Cadmium, and Chromium.
 - c. Semi-annual benchmark DMRs were not submitted for 2017 and 2018.
 - d. Records of data analyses and loading calculations for the Chesapeake Bay TMDL monitoring performed for nutrient and sediment sampling were not observed in the records reviewed. Loading calculations are to be performed with the available monitoring data to determine if a Chesapeake Bay TMDL Action Plan is required.
 - e. The site map that was observed did not include the Outfall 002 location as part of the Facility. The Facility did not update the Stormwater Pollution Prevention Plan ("SWPPP") deleting Outfall 002 and notify the Department of the outfall change within 30 days of the change.
 - f. Records of annual stormwater employee training were not observed for 2016, 2017, and 2018.
 - g. Records of routine quarterly facility inspections in 2017 and 2018 were not observed.
 - h. Records of annual evaluations of outfalls for presence of unauthorized discharges were not observed for 2017 and 2018.
 - i. Records of Comprehensive Site Compliance Evaluations ("CSCE") were not observed for 2017 and 2018.
5. 2014 Permit Part I.A.1.a states that permittee must perform and document quarterly visual examination of stormwater discharges.
6. 2014 Permit Part I.A.1.b provides the monitoring requirements for benchmark monitoring. Permit Part I.A.2.d(2) provides that monitoring for benchmark, effluent

limitation and impaired waters shall be conducted at least once each of the following semiannual periods: January through June, and July through December.

7. 2014 Permit Part II.C requires the submission of the results of monitoring required by the permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. The permit Part I.A. requires semiannual monitoring to be submitted by January 10 and July 10.
8. 2014 Permit part I.B.7.b(3)(b) provides that the permittee shall analyze the nutrient and sediment data collected and compare the result to the loading values given in the permit.
9. 2014 Permit Part I.B.11 provides that the permittee may add new/or delete existing stormwater outfalls at the facility as necessary/appropriate. The permittee shall update the SWPPP and notify the department of all outfall changes within 30 days of the change and submit a copy of the updated SWPPP site map with their notification.
10. 2014 Permit Part III.B.4.b(6) states that the permittee shall implement a storm water employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials and activities are exposed to stormwater and for those employees responsible for implementing the SWPPP. The SWPPP shall include a summary of the training performed.
11. 2014 Permit Part III.B.5 states that routine facility inspections are to be performed, at a minimum quarterly, with the results of the inspections documented in the SWPPP.
12. 2014 Permit Part III.D.2 provides that the SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges.
13. 2014 Permit part III.E states that the CSCEs are to be performed at least once each calendar year after coverage begins. Permit Part III.E.3 states that the CSCEs are to be performed at least once each calendar year and a compliance evaluation report summarizing the scope of the inspection shall be maintained with the SWPPP.
14. On April 4, 2019, DEQ issued NOV No. W2019-04-T-0003, as well as the inspection report from the February 22, 2019, inspection, to Waterway for the violations listed in C(4) – (13), above. On May 17, 2019, Waterway responded to the NOV (“NOV Response”), and stated that the observations noted in the NOV had been corrected.
15. On August 27, 2019, DEQ issued Waterway NOV W2019-08-T-0005 for failing to

submit the first semiannual benchmark monitoring for Outfall 002. However, this Outfall was eliminated pursuant to Waterway's May 17, 2019, notification to DEQ.

16. On July 7, 2020, DEQ staff conducted a compliance inspection ("2020 Inspection") of the Facility. During the inspection DEQ observed the following:
 - a. Records of the 4th quarter 2019 QVM were not documented, and storm event dates documenting the duration between the previous measurable storm events were not documented.
 - b. Benchmark monitoring for the 2nd semiannual monitoring period of 2019 was not documented.
 - c. Failure to document corrective actions in the SWPPP for benchmark level exceedances.
 - d. Failure to conduct monitoring of discharge for Total Suspended Solids ("TSS"), Total Nitrogen ("TN"), and Total Phosphorus ("TP") during the 2014 Permit term during each of the first four (semi-annual) monitoring periods. Waterway did not conduct the monitoring during the first full permit term of the 2019 Permit.
 - e. Failure to perform routine inspection during a discharge event.
17. 2019 Permit Part I.A.1.a states that the permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall... the examinations shall be made at least once in each of the following three month periods: January through March, April through June, July through September, and October through December. 2019 Permit Part I.A.2.c states that for each monitoring event... along with the monitoring results, the permittee shall identify the date and duration (in hours) of the storm events sampled; rainfall total (in inches) of the storm event that generated the sample runoff; and the duration between the storm event sampled and the end of the previous measurable storm event.
18. 2019 Permit Part I.A.2.d(2) states that benchmark monitoring, effluent limitation monitoring and impaired waters monitoring (for waters both with and without an approved TMDL). Monitoring shall be conducted at least once each of the following semiannual periods each year of permit coverage: January through June, and July through December. 2019 Permit Part I.A.5 states that permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II.C.
19. 2019 Permit Part I.B.8.b(3) states that facilities that did not complete four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall be subject to completing the monitoring requirements in Part I.B.8.a beginning with the first full monitoring period after receiving permit coverage.

20. 2019 Permit Part I.A.6 states that if benchmark monitoring result exceeds the benchmark concentration value for that parameter, the permittee shall review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance.
21. 2019 Permit Part III.B.5 states that at least once each calendar year, the routine facility inspection shall be conducted during a period when stormwater discharge is occurring.
22. On August 11, 2020, DEQ transmitted the inspection report from the July 17, 2020, inspection, to Waterway with the observations listed in C(16) – (21), above. On August 25, 2020, Waterway responded to the inspection report (“Inspection Report Response”), and stated that the observations noted in the inspection report had been corrected.
23. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
24. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
25. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
26. The Department has issued coverage under no permits or certificates to Waterway other than under VPDES Permit No. VAR05 (Reg. No. VAR051453).
27. The Southern Branch of the Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
28. Based on the 2019 Inspection, the 2020 Inspection, the NOV Response, and the Inspection Report Response, the Board concludes that Waterway has violated 2014 Permit Parts I.A.1.a, I.A.1.b, I.A.2.d(2), II.C, I.B.7.b(3)(b), I.B.11, III.B.4.b(6), III.B.5, III.D.2, III.E, and 2019 Permit Parts I.A.1.a, I.A.2.c, I.A.2.d(2), I.A.5, I.B.8.b(3), I.A.6, III.B.5; as noted in paragraphs C(4) – (13), and C(16) – (21), of this Order.
29. Waterway has submitted documentation that verifies that the violations as described in paragraphs C(4) – (13), and C(16) – (21), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Waterway, and Waterway agrees to:

1. Pay a civil charge of \$11,980 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 day of execution of Order	\$4,480 or balance
January 1, 2022	\$2,500 or balance
April 1, 2022	\$2,500 or balance
July 1, 2022	\$2,500

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Waterway. Within 15 days of receipt of such letter, Waterway shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Waterway shall include its Federal Employer Identification Number (FEIN) (_ - _____) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Waterway shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Waterway for good cause shown by Waterway, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2019-04-T-0003 dated April 4, 2019, and in NOV No. W2019-08-T-0005 dated August 27, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Waterway admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Waterway consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Waterway declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Waterway to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Waterway shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Waterway shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Waterway shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Waterway. Nevertheless, Waterway agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Waterway has completed all of the requirements of the Order;
 - b. Waterway petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Waterway.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Waterway from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Waterway and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Waterway certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Waterway to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Waterway.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Waterway voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20____.

Craig R. Nicol, Regional Director
Department of Environmental Quality

Waterway Materials Recycling, LLC, voluntarily agrees to the issuance of this Order.

Date: 7/20/21 By: Tara Preston, manager
(Person) (Title)
Waterway Materials Recycling, LLC

Commonwealth of Virginia
City/County of VA Ball

The foregoing document was signed and acknowledged before me this 25th day of
July, 2021, by Tara Preston who is
manager of Waterway Materials Recycling, LLC, on behalf of the
company.

B C Robertson
Notary Public

7208059
Registration No.

My commission expires: 2/29/24

Notary seal:

